



## **Articles of Governance**

April 1st, 2021

### ARTICLE I: GENERAL PROVISIONS

1. **Name.** The name of the organization is the “Fair Cobalt Alliance” (the “FCA”).
2. **Mission Statement.** The FCA is a multi-stakeholder initiative that seeks (a) to transform the cobalt artisanal mining (“ASM”) industry to have a positive impact in the Democratic Republic of the Congo (the “DRC”) by channelling demand for and increasing availability of responsible ASM cobalt, (b) to systemically address the root causes of child labour and dangerous practices at artisanal cobalt mining sites, and (c) to foster a just transition to a diversified economy to drive the sustainable development of the region. The FCA achieves this by bringing together stakeholders along the cobalt supply chain who recognize the development potential of artisanal cobalt mining operations as a legitimate economic activity contributing to the local economy and providing direct and indirect livelihoods for thousands of people in the DRC.

More information about the FCA’s principles and approach can be accessed at:  
<https://theimpactfacility.com/commodities/cobalt/fair-cobalt-alliance/>.

### ARTICLE II: LEGAL STRUCTURE

1. Legal Structure. The FCA is coordinated by The Impact Facility for Sustainable Mining Communities (“The Impact Facility”), a UK registered charity, hereafter The FCA Secretariat. The Impact Facility manages the FCA as a stand-alone initiative and ensures that all FCA funding is allocated to projects approved and accounted for by the FCA Steering Committee. All Members of the FCA enter into a formal agreement with The Impact Facility with respect to their rights, duties, and obligations under these provisions.

### ARTICLE III: GOVERNANCE

1. General. The FCA shall be governed by and subject to the oversight of a Steering Committee.

2. Steering Committee Composition. Each founding member of the FCA (each, a “Founding Member”) shall be entitled to appoint 1 Director to the Steering Committee. The Founding Members are: Tesla, Glencore, Signify, Fairphone, and Huayou Cobalt. The Directors appointed by Founding Members shall serve up to two (2) terms of two (2) years each, at which point they will be subject to election as other members, provided that such Founding Members continue to remain Members of the FCA and satisfy those membership obligations set forth in the Terms of Reference, dated as of April 1st, 2021 (the “Terms of Reference”). Additional rotating seats on the Steering Committee shall be available to be filled by Directors nominated by the Members up to a maximum of nine (9) Directors. The Members shall aim at achieving a balanced representation of private sector along the cobalt supply chain as well as non-profit actors on the Steering Committee, when nominating candidates for a Director position.

In the event that a Founding Member resigns from, is removed as, or otherwise ceases to be a Member, or such Founding Member provides notice to the Steering Committee that it waives its right to appoint a Director, such position on the Steering Committee shall convert to a rotating seat available to be filled by Directors nominated by the Members that are not Founding Members.

3. Nominations to the Steering Committee. Each Member may nominate an employee to serve as a Steering Committee Director, which shall be made no earlier than ninety (90) days prior and no later than thirty (30) days before the Annual Plenary. Voting on Steering Committee Directors shall occur at the Annual Plenary in a manner determined by the Secretariat. If a Director position becomes vacant before the Annual Plenary, a replacement director shall be selected by the Member that nominated such Director. If the Member is no longer participating in the FCA, the Steering Committee retains the discretion to call for a special election to fill the vacancy, with such elected replacement Director to serve the remainder of the original Director's term.
4. Steering Committee Responsibilities. The Steering Committee shall have responsibility for:
  - (a) FCA Strategy: Approving the FCA's strategic objectives, including communication strategy and alignment with other initiatives.
  - (b) Organizational Oversight: Approving the annual work programme, new FCA work groups, approving internal policies (including a contracting policy, Member admission policy, anti-trust policy, human rights policy, conflicts of interest policy, anti-corruption policy, fair competition policy, and an ASM partnership policy), approving the annual budget, and overseeing operational capability and organizational structure.
  - (c) Risk Management Oversight: Approving FCA risk management policy and approach and reviewing the design and effectiveness of risk management policies and procedures.
  - (d) Monitoring: Monitoring effectiveness of the FCA grievance mechanism, monitoring performance of the FCA against its key performance indicators (as defined in Article IX), and overseeing a financial review that includes independent third-party audit and assurance and transparency to Members and externally.
5. Steering Committee Director Term. Each Steering Committee Director that is not appointed by a Founding Member shall serve a two (2) year term, serving a maximum of two subsequent terms..
6. Steering Committee Director Resignation, Replacement, and Removal.

- (a) A Director may resign at any time upon notice given in writing or by electronic transmission to the Steering Committee or to the Secretariat.
- (b) A Director may be removed by the unanimous vote of the other Directors for reasons that include, but are not limited to, (a) repeated absences from Steering Committee Meetings such that it may be reasonably considered an abdication of responsibilities, (b) a failure to disclose a conflict of interest, or (c) actions otherwise detrimental to the FCA.

7. Steering Committee Meetings.

- (a) Frequency of Meetings. The Steering Committee shall hold periodic meetings at such other regular intervals as the Steering Committee may from time to time by resolution designate. Special meetings of the Steering Committee may be called at any time by the Steering Committee Chair or the Secretariat.

(b) Quorum and Vote.

- (i) Except as otherwise provided herein, the presence of a majority of the Directors then serving on the Steering Committee shall be required to constitute a quorum for the transaction of business at any meeting of the Steering Committee, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the Directors present.
- (ii) Each Director is entitled to one vote, which may be made by written proxy. The Steering Committee shall make a good faith effort to make all decisions by consensus. Any Director may recuse himself or herself from a vote or a meeting of the Steering Committee. Any Director may appoint an individual from his or her organization to serve as a stand-in for that Director, if the Director is unable to participate in any Steering Committee activity.

8. Action by Consent. Any action required or permitted to be taken at any meeting of the Steering Committee may be taken without a meeting and without prior notice if all Directors consent thereto in writing or by electronic transmission(s), and such written consent or electronic transmission(s) are filed with the minutes of proceedings of the Steering Committee.

9. Steering Committee Chair.

- (a) The Steering Committee Directors shall elect a maximum of two Steering Committee Co-Chairs to serve as the Steering Committee Chair. The Steering Committee Chairs shall serve for a term of one year. The same Steering Committee Director shall not serve as the Steering Committee Chair for two consecutive terms unless otherwise agreed upon by the Steering Committee.
- (b) The Steering Committee Chairs shall:
  - (i) Coordinate with the FCA Secretariat in preparing the agenda for Steering Committee calls and meetings.

- (ii) Lead all meetings and calls of the Steering Committee. If the Steering Committee Chair is unable to preside over meetings or calls of the Steering Committee, the Directors present may appoint another Director for the purpose of chairing such meeting or call.
- (iii) Facilitate consensus decision-making within the Steering Committee.

10. Insurance. The FCA shall obtain liability insurance coverage with respect to actions or omissions made in good faith by the Directors.

#### ARTICLE IV: MANAGEMENT

1. General. The day-to-day operations of the FCA shall be managed by The FCA's Secretariat, who shall report to and advise the Steering Committee. The Impact Facility shall serve as the FCA's Secretariat permanently.

2. Responsibilities. The responsibilities of the Secretariat include, but are not limited to:

- (a) preparing the agenda for, and hosting, calls and meetings of the FCA Steering Committee;
- (b) drafting minutes of respective calls and meetings;
- (c) organizing the Annual Plenary and quarterly member meetings;
- (d) facilitating and drafting the design and development, and overseeing the budgeting and execution, of actionable programmes and annual plans for ASM mine sites and broader communities;
- (e) selecting and managing service providers to the FCA, including NGOs, consultants, experts, and independent third party financial auditors;
- (f) monitoring, aggregating, and analysing program performance and impact data for reporting to the Steering Committee;
- (g) overseeing due diligence for new members;
- (h) conducting outreach and engagement with potential Members, Supporting-Non Members, partners, and other third parties;
- (i) facilitating the FCA's dispute resolution and grievance process;
- (j) organizing the Steering Committee's voting and vote-counting process with respect to Director nominations;
- (k) overseeing internal members communications and the development of a strategic communications plan to ensure transparency;
- (l) drafting FCA public and third-party reporting;
- (m) daily administrative decision making;
- (n) maintaining the books of account and a current registry of Members and other participants in the FCA; and
- (o) subject to compliance with FCA eligibility criteria, selecting additional mine sites.

Notwithstanding any provision herein to the contrary, and in accordance with the FCA's internal policies and procedures with respect to conflicts of interest, The Impact Facility as the FCA Secretariat shall recuse itself from and not participate in any discussion, deliberation, or voting of the Steering Committee or Members in which The Impact Facility has an actual or potential financial or other material interest that impairs, or might appear to impair, its independence or objectivity in the discharge of its responsibilities and duties to the FCA.

3. Work groups. Each work group pursued by the FCA shall be coordinated by the Secretariat, and act as set forth in the Terms of Reference. Each work group may establish a committee to provide non-binding advice to the Steering Committee on relevant issues and best practices. Such committee shall be selected by the Secretariat and approved by the Steering Committee, and include, inter alia, subject matter experts, individuals with relevant ASM expertise, and/or other relevant expertise and experiences. "Relevant ASM expertise" may include, but not be limited to (i) experience working at or with ASM operations in the DRC, meaningful involvement on FCA work groups in the ASM context, or experience in advocacy of responsible mining practices at ASM sites, and/or (ii) be in a position to reasonably represent the perspective of ASM stakeholders.

## ARTICLE V: MEMBERSHIP

1. General. The FCA shall have multiple categories of membership and participation as set forth in the Terms of Reference. The membership of the FCA (including the Founding Members)" shall not be responsible, individually or collectively, for any of the FCA's debts, liabilities, or obligations.

2. Admission.

(a) In order to be admitted as a Member of the FCA, all parties seeking to become a Member shall submit a completed application in compliance with the FCA's internal membership admission policy and be subject to due diligence with respect to compliance with the FCA's standards on human rights, corruption and such other matters that the Steering Committee and Secretariat may determine. The Steering Committee reserves the right not to admit a Member because of prior conduct or statements that could undermine reputation of FCA

(b) Admission shall in every case be subject to:

- (i) The discretion of the Steering Committee, voting in accordance with Article 7 Section b hereof, in consultation with the Secretariat; and
- (ii) Such party entering into an agreement with or administered by The Impact Facility with respect to membership.
- (c) Obligations. As set forth in the Terms of Reference, Members shall:
  - (i) Make a contribution to the FCA, whether financial, in-kind or through their expertise and participation, with regard to membership contributions as defined in the Terms of Reference.
  - (ii) Designate an individual to serve as a contact person and representative to the FCA for participation in the Annual Plenary, special and any other meetings of the Members, work group meetings, and the promotion of FCA objectives.
  - (iii) Adhere to the Governance provisions herein.
  - (iv) Agree to the FCA Call to Action.
  - (v) Annually renew or affirm the contractual relationship with or administered by The Impact Facility with respect to membership in the FCA.

### 3. Member Meetings.

- (a) The Members shall meet at least once annually (the “Annual Plenary”) for the purpose of:
  - (i) Discussing major activities from the past year;
  - (ii) Discussing planned major activities for the future year;
  - (iii) Discussing achievements of any KPIs that have been set;
  - (iv) Overseeing a financial review that includes independent third-party audit and assurance;

- (v) Nominating and electing Directors;
- (vi) Conducting voting on any additional issues that require a vote of Members;  
and
- (vii) Transacting any other proper business as may come before such meetings.

(b) Quorum and Vote.

- (i) Except as otherwise provided herein, the presence of representatives from one-half (1/2) of the Members shall be required to constitute a quorum for the transaction of business at any Annual Plenary or other meeting of the Members, and all matters shall be decided at any such meeting, a quorum being present, by the affirmative votes of a majority of the Members present.
- (ii) Each Member is entitled to one vote. Votes may be made by written proxy. The Members shall make a good faith effort to make all decisions by consensus.

4. Action by Consent. Any action required or permitted to be taken at any meeting of the Members thereof may be taken without a meeting and without prior notice if at least two-thirds (2/3) of all Members consent thereto in writing or by electronic transmission(s).

5. Membership Renewal; Resignation and Removal of Members.

- (a) Members shall annually enter into a new, or affirm their existing, contractual relationship with The Impact Facility with respect to their membership in the FCA.
- (b) A Member may resign at any time upon notice given in writing or by electronic transmission to the Steering Committee or to the Secretariat.
- (c) At any time, the Secretariat or a Member may notify the Steering Committee that a Member is allegedly not adhering to the requirements of Members set forth herein or is otherwise conducting its affairs in a manner prejudicial or detrimental to the FCA. Upon receipt of such notification, the Steering Committee shall direct the Secretariat to conduct a review of the Member's adherence and conduct, and provide a report. If the Steering Committee determines that the Member is non-adherent, the Steering Committee shall notify the Member in writing and request that the non-adherence be remedied within a set period of time. If, in the sole and absolute discretion of the Steering Committee, the non-adherence is not remedied within such set period of time, the Member may be removed by the vote of at least two-thirds (2/3) of the Steering Committee, excluding the vote of any Director nominated by such Member.

- (d) A Member's obligations of membership, including financial obligations, must be fulfilled until the effective date of the resignation or removal of such Member.
- (e) A Member that has resigned, been removed, failed to renew or affirm its membership or otherwise ceased to be a Member of the FCA may reapply for membership after six (6) months in accordance with the admission process set forth herein.

#### ARTICLE VI: THIRD PARTIES

1. Beyond formal membership, third-party participation in the FCA may include other types of participants as set forth in the Terms of Reference.

#### ARTICLE VII: ADVISORY BOARD

The FCA shall institute an advisory board consisting of third-party advisors selected by the Secretariat in consultation with the Steering Committee, of such size that the Secretariat in consultation with the Steering Committee may determine. The advisory board shall render non-binding advice to the Secretariat and Steering Committee, and operate according to separate written terms of reference approved by the Steering Committee. At least one of the advisory committee members shall have either (i) experience working at or with ASM operations in the DRC, meaningful involvement on FCA work groups in the ASM context, or experience in advocacy of responsible mining practices at ASM sites, and/or (ii) be in a position to reasonably represent the perspective of ASM stakeholders.

Meetings with the Advisory Board. Meetings of the advisory board shall be minuted, approved by the Secretariat, Steering Committee and advisory board, and made available publicly.

#### ARTICLE VIII: GRIEVANCE MECHANISM

The Secretariat shall establish and maintain an FCA grievance mechanism (the "Grievance Mechanism"), available to Members and external third parties. The Grievance Mechanism shall be established, publicized and maintained consistent with Principle 31 of the UN Guiding Principles on Business and Human Rights.



## ARTICLE IX: MISCELLANEOUS

1. Books of Account. At all times, the Secretariat shall maintain separate books of account for the FCA that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operation of the FCA in accordance with GAAP consistently applied. Such books of account shall also include (i) the ratio of FCA funds allocated to management expenses compared to the FCA funds allocated to operations and project implementation, and (ii) Member contributions to specific programs and work groups, as applicable. Such books of account shall be open to inspection and examination at reasonable times and after reasonable advance notice to the FCA by a Member. The books of account and the records of the FCA shall be examined by and reported upon as of the end of each fiscal year by a firm of independent certified public accountants that shall be selected by the Steering Committee.
2. External Reporting. The FCA shall publish an annual report with respect to the FCAs programs and work groups (the “Annual Report”), encompassing subject matters proposed by the Secretariat and confirmed by the Steering Committee.
3. Performance Standards. The Secretariat shall propose, and the Steering Committee shall confirm, certain Key Performance Indicators to regularly track and assess the performance of the FCA.
4. Confidentiality. All Directors and Members shall, upon election and admission, respectively, sign a written undertaking to uphold these Articles, including a requirement to maintain confidentiality of all information made available, provided, or entrusted to them during and after their directorship or membership terms. Information shared with Directors and Members should be assumed confidential unless specified otherwise by the Secretariat or Steering Committee.
5. Member Representations. The Secretariat shall establish guidelines for how Members may publicly represent their affiliation with the FCA. Members shall ensure that their public communications and representations with respect to the FCA and their affiliation therewith adhere to the FCA’s guidelines as mentioned in the TOR.

6. Internal Policies and Procedures. The Secretariat shall develop, the Steering Committee shall approve, and the FCA shall make available to its Members upon request, copies of the FCA's internal policies and procedures with respect to conflicts of interest, anti-corruption, human rights, and such other matters that the Steering Committee may determine.
7. Language of FCA Documents, Communications, and Proceedings. All meetings of the Steering Committee, the Annual Plenary, and other meetings of the Members shall be noticed and conducted in English, accommodating French translation upon request. The FCA shall make available English and French translations of Advisory Board minutes and resolutions and certain other documents the Secretariat and Steering Committee consider to be significant
8. Amendment. The Governance provisions herein shall be subject to the review and approval of the Steering Committee one (1) year after the date hereof, and thereafter shall be subject to the review and approval of the Steering Committee every two (2) years.
9. Dissolution. Notwithstanding any provision to the contrary, the FCA may be dissolved by the affirmative vote of three-quarters (3/4) of the Members. In the event of dissolution, the property and assets of the FCA shall be applied in satisfaction of all FCA debts and liabilities, after satisfaction of which the property and assets of the FCA shall be granted or transferred to another UK registered charity with a mission similar to the FCA nominated by the Steering Committee.